

Docket No.: 163-671

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT OPERATIONS

In re Application of:

Leopoldo Bevilacqua et al. Group Art Unit: 3752

Serial No.: 10/561,065 Examiner: Christopher S. Kim

Filed: February 24, 2006

For: VAPORIZATION WATER DISTRIBUTION PLANT

New York, NY 10036
April 5, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

This Reply Brief is being filed in response to the Examiner's Answer that was mailed February 5, 2010.

In the Examiner's Answer, the Examiner stated that claims 1, 3, 4, 5, 7, 9, 10, 13, 14 and 17-27 were rejected under 35 U.S.C. §112, first paragraph, because the specification fails to teach "expected operating pressures" that are recited in claims 14 and 20 and that the argument that the prior art (Weeth and Siegler) fails to teach a vaporization nozzle 14, made it uncertain how to interpret the term

"vaporization nozzle".

A patent application is not intended to be a set of plans for making a particular device. It is intended to be a concise description of an invention that a skilled worker can use to make and use an invention. The patent laws allow for a reasonable amount of experimentation in order to make an invention without holding a particular patent disclosure non-enabling. The disclosure is enabling even if significant work is required to select ideal operating conditions and materials, provided that the amount of work does not constitute undue experimentation. The Examiner has only pointed to the absence of a recitation of numerical values for "expected operating pressures" and has advanced no theory of undue experimentation or that the operating pressures are the essence of the invention such that the operating pressure is a critical operating parameter that must be disclosed. It is submitted that the Examiner has not supported the allegation of a non-enabling disclosure with regard to "expected operating pressures" with any argument or authority that provides any substantial reason that the disclosure is not enabling.

In the Examiner's Answer, the Examiner has urged that vaporization is defined as

- "1. the act of vaporizing
2. the state of being vaporized
3. the rapid change of water into steam, esp. in a boiler

The term vapor is defined as
a visible exhalation, as fog, mist, steam, smoke or noxious gas, diffused through or suspended in air"

The Examiner concluded that a nozzle that sprays water such as one disclosed by Weeth or Siegler would be a

vaporization nozzle. This argument does not address the fact that a nozzle that sprays water is not a vaporization nozzle as it does not vaporize water. The Examiner's proffered definition of the term "vaporizing" does not include the water spray of Weeth or Siegler.

A fire hose sprays water; it does not vaporize water in the ordinary use of the term. The term water spray applies to water in the liquid form and not water vapor. The difference between the cited prior art use of a water spray and the use of the term "vaporization nozzle" does not raise an issue of the lack of enablement as to a "vaporization nozzle".

The term "vaporization nozzle" is a plain description of a type of nozzle and it is not made non-enabling because the prior art uses a different type of nozzle, namely a spray nozzle.

The Examiner has not answered the appellant's argument that in the patent literature, the term "vaporization nozzle" is used to describe devices that transform a liquid into a vapor. Evidence of this use is found in U.S. 4,671,461 where at col. 3, line 17, the term "vaporization nozzle" is used and in WO2009/078293A1 where the term "vaporization nozzle" is used to describe the vaporizing element in a liquid material vaporizing apparatus. In addition, no authoritative text or reference has been cited to demonstrate that a vaporization nozzle is the same as a spray nozzle.

An enabling disclosure has been made and it is requested that this ground of rejection be reversed.

II: Claims 14, 17, 18, and 20-27 should not be rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

The Examiner, without mentioning any claim stated that the claims are generally narrative and indefinite, failing to conform to current U.S. practice and that they appeared to be a translation of from a foreign document and are replete with grammatical and idiomatic errors. No examples of improper language were identified in the Examiner's Answer.

The conclusory statements of the Examiner fail to demonstrate that the claims are indefinite. No specific grammatical error has been identified and no idiomatic error has been identified and moreover claims are not required to have perfect grammatical usage as the art of claim drafting is confined to a single sentence description of what is often a complex structure where repeated reference is made to prior parts of the single sentence using terms such as "said". The statutory requirement for patent claims does not mention grammar or idiomatic expressions. All that is required is that a patent claim must particularly point out and distinctly claim the subject matter that the applicant regards as the invention. It is submitted that the Examiner has not demonstrated that the appealed claims fail to meet the statutory requirement.

The claims comply with the definiteness requirement of 35 U.S.C. §112, second paragraph, and this ground of rejection should be reversed.

III: Claims 1, 3, 4, 7, 9, 10, 13 and 19 should not be rejected under 35 U.S.C. §103(a) as unpatentable over Weeth in view of Siegler.

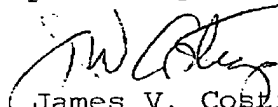
The Examiner has not related his statement that "it would appear that a nozzle that causes a mist would constitute a vaporization nozzle" to any part of the cited references. This assertion, which extrapolates from a definition of a vapor, cannot logically be relied upon to make a connection between the water sprays of Weeth and Siegler and a vaporization nozzle of the rejected claims. The cited prior art patents do not use the term "mist" and neither do the appealed claims. For this reason, there is no basis on which to conclude that the water spray nozzles from the sprinkler or liquid water dispensing nozzles of the cited references make obvious the use of a vaporization nozzle. The argument that the term "vaporization nozzle" describes the intended use of the nozzle has no merit because the term is applied to an article. An intended use limitation must recite a use with an article such as "a nozzle for use in the vaporization of water". This language is not used in the appealed claims.

The term "vaporization nozzle" is not an intended use limitation because it describes function and not use. The term "vaporization" is explicit and definite and as used with the term "nozzle" points out a device that transforms a liquid to the vapor state. The concept of the vaporization of a liquid is well known and there is no basis on which one can say that the application of liquid water according to Weeth and/or Siegler makes obvious the vaporization of liquid water. This is because the vaporization of water supplied by the devices of Weeth or Siegler would render the intended use of the water output of these patents unfit for

irrigation or water delivery according to their explicit disclosures.

An unobvious improvement has been disclosed that is worthy of patent protection. For these reasons and the reason set forth in the Main Brief, it is requested that this ground of rejection be reversed.

Respectfully submitted,



James V. Costigan
Registration No.: 25, 669

MAILING ADDRESS

Hedman & Costigan, P.C.
1185 Avenue of the Americas
New York, NY 10036
(212) 302-8989